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5 **UNITED STATES DISTRICT COURT FOR THE**  
6 **WESTERN DISTRICT OF WASHINGTON**  
7 **AT SEATTLE**

8 JESSICA BENTON, SHELBY BRYANT,  
9 ANNE MARIE CAVANAUGH, ALYSSA  
10 GARRISON, AND CLARE THOMAS,  
11 Plaintiff,  
12 v.

13 CITY OF SEATTLE,  
14 Defendant.

No. 2:20-CV-01174- RAJ

MOTION TO RECONSIDER  
MOTION FOR TEMPORARY  
RESTRAINING ORDER [Dkt 4]

**NOTE FOR HEARING:**  
August 17, 2020

15 **I. RELIEF SOUGHT**

16 Plaintiffs move this Court to reconsider its MOTION FOR TEMPORARY  
17 RESTRAINING ORDER, Dkt. #4, pursuant to Local Civil Rule 7(h).

18 The Court denied the motion on August 10, 2020. Dkt. #25. The  
19 instant motion is filed within fourteen days of entry of that order. Local Rule  
20 CR 7(h)(2).  
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1 Plaintiffs ask this Court to reconsider its Order finding that Plaintiffs  
2 failed to show that (1) the balance of equities tipped in their favor and (2)  
3 the requested temporary restraining order was in the public interest.  
4

5 “Motions for reconsideration are disfavored.” Local Rule CR 7(h)(1).  
6 “The court will ordinarily deny such motion in the absence of a showing  
7 of manifest error in the prior ruling or a showing of new facts or legal  
8 authority which could not have been brought to its attention earlier with  
9 reasonable diligence.” *Id.*  
10

## 11 II. ASSIGNMENT OF ERROR

12 With respect to Plaintiff’s First and Fourth Amendment claims, the  
13 Court found that, like in *Black Lives Matter Seattle-King County v. City of*  
14 *Seattle*, No. 2:20-cv-00887 (W.D. Wash. filed July 27, 2020), the first two  
15 *Winter* factors were met: plaintiffs showed a likelihood of success on the  
16 merits and irreparable harm. Dkt. #25 at p. 5.  
17

18 The Court found Plaintiffs did not satisfy the last two *Winter* factors  
19 because they failed to establish that (1) the balance of equities tipped in  
20 their favor and (2) issuing the temporary restraining order is in the public  
21 interest. Dkt. #25 at p. 7.  
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23

1 The record does not support the Court's finding that "Plaintiffs have  
2 not shown why the July 25, 2020 protests require this Court to rebalance  
3 the equities or to substitute a tailored preliminary injunction with a blanket  
4 ban on crowd control weapons." Dkt. #25 at p. 6.

6 Rather, the Court had a well-developed record before it but did not  
7 weigh all relevant evidence when assessing the *Winter* factors, resulting  
8 in manifest error. The record revealed how SPD misused its crowd control  
9 weapons and how that misuse impacted Plaintiffs: rendering them unsafe  
10 to continue to exercise political speech, notwithstanding the operative  
11 injunction; chilling the exercise of that right such that Plaintiffs sought  
12 protective gear as a condition precedent to continue engaging in political  
13 speech.  
14

16 Moreover, the record established that the use of force on July 25 was  
17 exceptionally violent – far and apart from other protest actions.  
18 Understood in the context of an operative Temporary Restraining Order,  
19 then, this fact weighs against the Defendant and for Plaintiffs.  
20

1           III.    ARGUMENT

2           A. Considering All Relevant Evidence, The Equities Weigh in Favor of,  
3           And the Public Interest is Best Served By, Issuance of a Temporary  
4           Restraining Order Enjoining Use of CCW.

5           1) The Evidence Before the Court Underlines That Seattle Police  
6           Department's Conduct on July 25 was not a Misstep but a  
7           Coordinated Attack in Flagrant Disregard of this Court's Orders.  
8           Accordingly, the Public Needs an Order of Cessation, Not  
9           Clarification.

10          The force used by SPD on July 25 was remarkable both in its severity  
11          and the boldness with which it was wielded. Moreover, the misuse of CCW  
12          was not a matter of simply mistaken or confused officers; it was a  
13          coordinated response by SPD. One protester recounted from video 18  
14          flashbangs in a manner of 30 seconds. *Black Lives Matter*, No. 2:20-cv-  
15          00887 (W.D. Wash. filed July 27, 2020) Kyashna Decl., Dkt. #64 at ¶ 19.

16          Rather than utilize select crowd control weapons with restraint and  
17          only in limited circumstances, the Seattle Police Department sent a  
18          cascade of each of these contested weapons against protesters in quick  
19          succession, refuting any argument that these were necessary for dispersal,  
20          when time to disperse and comply not provided. Instead, chaos was sown.  
21  
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1 A registered nurse recounted being “repeatedly doused in pepper  
2 spray.” *Black Lives Matter*, No. 2:20-cv-00887 (W.D. Wash. filed July 27,  
3 2020) Barrett Decl., Dkt. #54 at ¶ 24. Another protester reported: “I  
4 watched SPD use hand-held pepper spray to mace the Wall of Moms as  
5 they moved to the front of the crowd.” *Black Lives*, No. 2:20-cv-00887  
6 (W.D. Wash. filed July 27, 2020) Baker Decl., Dkt. #53 at ¶ 23.

8 More than blast balls and chemical irritants, SPD also launched  
9 projectiles indiscriminately: “There were police officers wearing gray  
10 coveralls and tactical vests, rather than the normal police uniforms. I  
11 believe those officers to be SWAT members. These officers were firing  
12 baton rounds—rubber bullets or sponge-tipped bullets—indiscriminately  
13 into the crowd.” *Black Lives Matter*, No. 2:20-cv-00887 (W.D. Wash. filed  
14 July 27, 2020) Matney Decl., Dkt. #74 at ¶ 10.

17 SPD was not acting in earnest on July 25, nor was it “controlling” a  
18 crowd. Instead, officers in the department ambushed residents engaged in  
19 political speech: “Then, as we were walking down a hilly street, without  
20 any warning, the police came quickly from behind us, rushed us and used  
21 flash bangs, blast balls, and pepper spray.” *Black Lives Matter*, No. 2:20-  
22 cv-00887 (W.D. Wash. filed July 27, 2020) Bruce Decl., Dkt. #56 at ¶ 7.

1 Another protester confirmed: “I also saw Seattle police absolutely  
2 drench people in pepper spray simply for not moving fast enough.” *Black*  
3 *Lives Matter*, No. 2:20-cv-00887 (W.D. Wash. filed August 4, 2020)  
4 Thomas Decl., Dkt. #100 at ¶ 19.

6 These actions were confirmed by an attorney in attendance in her  
7 sworn declaration: “Even though people were complying and moving  
8 away from the SPD line, officers physically pushed and used flash bangs  
9 and chemical irritants on anyone who was not moving as quickly as the  
10 officers wanted them to move.” *Black Lives Matter*, No. 2:20-cv-00887  
11 (W.D. Wash. filed July 27, 2020) Chen Decl., Dkt. #59 at ¶ 8.

13 Another protester – a mother – agreed: “I’m still in shock from this  
14 experience. It was appalling. I have never experienced anything like it.  
15 It seemed like the police wanted to attack us. They seemed angry and  
16 fixated on hurting us; it was like they wanted to provoke a reaction from  
17 the crowd so that they could retaliate.” *Black Lives Matter*, No. 2:20-cv-  
18 00887 (W.D. Wash. filed July 27, 2020) Forest Decl., Dkt. #62 at ¶ 20.

21 What is more, the use of CCW by SPD on July 25 was exceptional  
22 relative to other protests this summer.

1 A community member present for the protests throughout the  
2 summer details the marked shift in SPD's approach at this protest on July  
3 25 – a mere 24 hours after a federal order was entered enjoining  
4 implementation of the highly-contested CCW ordinance:  
5

6 “In May and June, I was shot with less-lethal projectiles, tear-gassed,  
7 and pepper sprayed by police. I protested outside of the East Precinct  
8 every day until police abandoned it and CHOP was created. But Saturday,  
9 July 25, 2020 was the most violent and aggressive police treatment of  
10 protesters that I have seen at any point since the killing of George Floyd.”  
11 *Black Lives Matter*, No. 2:20-cv-00887 (W.D. Wash. filed August 4, 2020)  
12 Thomas Decl., Dkt. #100 at ¶ 3. “There was so much smoke in the air. The  
13 clouds of smoke were three or four times thicker than I’d seen at earlier  
14 protests.” *Id.* at ¶ 14. “The rate of deployment and the volume of weapons  
15 was much greater than I’d seen at earlier protests.” *Id.* at ¶ 15.  
16  
17

18 Another protester, a graduate student, observed unique misuse of  
19 power by SPD that day: “But the police violence I experienced and  
20 observed on July 25, 2020, was the most I have ever seen and experienced  
21 in all the protests I have ever attended. I had never seen or experienced  
22 anything like what the SPD did that day.” *Black Lives Matter*, No. 2:20-cv-  
23

1 00887 (W.D. Wash. filed August 4, 2020) Kramer Decl., Dkt. #103 at ¶ 4.  
2 “SPD threw grenades into densely packed areas that were already well  
3 blanketed in gas or smoke.” *Id.* at ¶ 8.  
4

5 Speaking specifically about SPD’s use of blast balls, a community  
6 member relayed: “I was terrified of the number of blast balls and explosions  
7 going off, which were more than I had seen at any other protest this  
8 summer.” *Black Lives Matter*, No. 2:20-cv-00887 (W.D. Wash. filed July 27,  
9 2020) Bonafilia Decl., Dkt. #55 at ¶ 8.  
10

11 A journalist confirmed the uniqueness of July 25: “In the nearly two  
12 months that I have been documenting and livestreaming these protests, I  
13 have sometimes encountered the effects of pepper spray or blast balls,  
14 directed against others. Saturday, July 25, 2020, was different. Other  
15 independent media and I were targeted by officers who used painful crowd  
16 control weapons against us.” *Black Lives Matter*, No. 2:20-cv-00887 (W.D.  
17 Wash. filed July 27, 2020) Wieser Decl., Dkt. #73 at ¶ 14.  
18  
19

20 The observation of the journalist was corroborated by a seasoned  
21 protester and mother: “Of all of the protests I have attended this year—and  
22 I have attended well over 30—the police violence on July 25, 2020 was the  
23



1 worst and most indiscriminate.” *Black Lives Matter*, No. 2:20-cv-00887 (W.D.  
2 Wash. filed July 27, 2020) Kyashna Decl., Dkt. #64 at ¶ 30.

3 Yet another protester agreed: “On July 25, 2020, the Seattle Police  
4 Department (“SPD”) unleashed the worst use of force I have seen since the  
5 initial demonstrations in May 2020.” *Black Lives Matter*, No. 2:20-cv-00887  
6 (W.D. Wash. filed July 27, 2020) Sill Decl., Dkt. #69 at ¶ 3.

7  
8 After considering all relevant evidence related to bold misuse of CCW  
9 a day after the CCW ordinance was enjoined, the Plaintiffs have shown  
10 why this Court should modify its tailored preliminary injunction guiding  
11 judicious use of these weapons to enjoin their use completely.  
12

13 2) The Evidence Before the Court Demonstrates that Individuals  
14 Who Want to Exercise Political Speech Have Been and Are Being  
15 Chilled From that Exercise by The City’s Noncompliance with  
16 This Court’s Orders

17 The disruptive nature of SPD’s indiscriminate force means  
18 protesters—like plaintiffs—bear the burden of outfitting themselves to  
19 match SPD’s dispensation of crowd control weapons to be able to safely  
20 engage in political speech on the streets. This burden is real, and it  
21 endures.  
22  
23

1 Plaintiffs in *Black Lives Matter* did not provide evidence or argument  
2 about the practical inhibition on political speech resulting from SPD's  
3 inability to restrain use of these weapons. That case did not provide  
4 evidence related to the inhibitive nature of protesting in this city because  
5 of SPD and its inability to exercise restraint.  
6

7 Here, plaintiffs did provide such evidence.

8 Plaintiff Benton explained how she borrowed chemical goggles to  
9 attend on July 25 but found this gear insufficient to protect her from  
10 exposure to the chemical agents gratuitously dispersed by SPD. Benton  
11 Decl., Dkt. #5 at ¶ 4.  
12

13 Benton's experience is similar to an that of an attorney present at the  
14 protests, who also found goggles insufficient: "There was a lot of gas in the  
15 air, and there were flash bangs going off. I had goggles that protected my  
16 eyes, but it was impossible to avoid inhaling the gas. It made my face burn.  
17 My throat and nose stung badly, triggering coughing fits." *Black Lives*  
18 *Matter*, No. 2:20-cv-00887 (W.D. Wash. filed July 27, 2020) Chen Decl.,  
19 Dkt. #59 at ¶ 4.  
20  
21

22 Unlike plaintiffs in *Black Lives Matter*, Benton highlighted that she only  
23 remained at the protest for 45 minutes before having to leave "because what

1 I was wearing was insufficient when Seattle Police Department officers  
2 deployed noxious gases into the crowd.” Benton Decl., Dkt. #5 at ¶ 5.

3 Later, Benton tried to obtain a gas mask to protect herself. *Id.* at ¶ 8.  
4 After searching locally for about three hours, Benton discovered local stores  
5 were sold out. *Id.* at ¶ 9. Ultimately, she ordered a gas mask online, but  
6 until it arrived she was unable to protest because of her experience on July  
7 25; but Benton would have felt able to protest without a gas mask if the  
8 Seattle Police Department were prevented from using chemical agents,  
9 projectile guns, and blast balls. *Id.* at ¶ 11.

12 Plaintiff Thomas has also not been back to a protest since attending  
13 July 25 in goggles that proved insufficient. Thomas Decl., Dkt. #7 at ¶ 4.  
14 From that experience, Thomas realized she would need to obtain a mask,  
15 respirator, and knee pads before returning to protest. *Id.* at ¶ 7. She must  
16 forego political speech on timely political issues until she obtains them.

18 Plaintiff Bryant also missed opportunities to engage in political  
19 speech while waiting for protective gear to arrive. Although Bryant wore  
20 goggles and an ATV helmet on July 25, she could not return until she  
21 obtained a gas mask, respiratory, and knee pads. Bryant Decl., Dkt. #8 at  
22 ¶¶ 5-15.

1 Bryant missed six protest events because she did not have gear that  
2 would protect her from SPD's actions – when a court order did not – on  
3 July 25. *Id.* at ¶ 17.

4  
5 Similarly, Plaintiff Garrison had to forego protesting to protect  
6 herself after SPD's misuse of CCW on July 25. Garrison Decl., Dkt. #9 at  
7 ¶ 12. She quickly determined the helmet, chemistry goggles, and umbrella  
8 she brought for protection were insufficient after witnessing a protester  
9 receive a chemical stream directly in the face. *Id.* at ¶ 13. Garrison spent  
10 \$209 on a respirator to be able to attend protests safely again in Seattle.  
11 *Id.* at ¶ 15. While awaiting arrival of this necessary protective gear,  
12 Garrison missed two protests she would have attended if she had proper  
13 protective gear, or if SPD did not have access to these CCW. *Id.* at ¶¶ 17,  
14 18.

15  
16  
17 Meanwhile, Plaintiff Cavanaugh is still unable to go protest and  
18 exercise political speech—as a 54 year old woman and seasoned activist,  
19 Cavanaugh decided she could not return to protest until obtaining  
20 protective eye gear after her experiences with SPD on July 25. Cavanaugh  
21 Decl., Dkt. #6 at ¶ 4. She struggles with figuring out the right combination  
22  
23

1 of protective gear to obtain to remain safe. *Id.* at ¶ 9. Protesting has  
2 become “a pre-planned, extremely involved event.” *Id.* at ¶ 10.

3 The actions of SPD have not provided Plaintiffs with reassurance that  
4 they will abide by the Court’s order related to restraint in use of these  
5 crowd control weapons. Plaintiff Cavanaugh awaits the ability to assemble  
6 and protest alongside her community without the need to obtain tactical  
7 gear to remain safe. A TRO enjoining possession of these weapons would  
8 provide Cavanaugh – and many protesters like her – the assurance that  
9 they can protest safely.  
10  
11

12 Absent from presentation by plaintiffs in *Black Lives Matter*, but  
13 present for this Court’s consideration, is a chart of sources indicating the  
14 range of costs for tactile equipment to be safe from misused crowd control  
15 weapons. *See* Dkt. #1, Attachment 1 at p. 2. That resource demonstrates  
16 that equipment can range from \$300 for a “budget” outfitting, \$650 for  
17 mid-tier gear; and \$2,150 for top-tier gear.  
18

19 Protesters are not free to exercise their 1<sup>st</sup> Amendment rights and  
20 engage in political speech without this cost-prohibitive gear and the  
21 burden of awaiting its arrival in the postal mail because of SPD’s continued  
22 inability to exercise restraint and abide by court orders.  
23

1 Protesters, like plaintiffs, are cobbling together resources to be able  
2 to continue to speak for justice in the streets of Seattle, by way of a  
3 crowdsourced fundraiser for protective gear. Ramon Decl., Dkt. #20 at ¶¶  
4 2-7. Over \$10,000 was generated by folks in the community – during a  
5 cataclysmic recession and a pandemic marked by record unemployment –  
6 to support the continued ability of individuals to protest for racial justice  
7 and timely respond to myriad political issues in the City. *Id.* That money  
8 was utilized to purchase protective gear, including gas masks for the OC  
9 spray, tactical helmets for the high velocity projectiles, and medical  
10 supplies to respond to blast balls utilized against crowds, often landing  
11 unpredictably. *Id.* at ¶ 8.

12  
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14  
15 3) The Evidence Before the Court Demonstrates that a TRO is in  
16 the Public Interest.

17 Plaintiffs in *Black Lives Matter* initially sought a complete prohibition  
18 of any chemical irritant such as CS gas (“tear gas”) or OC spray (“pepper  
19 spray”) and any projectile such as flash-bang grenades, “pepper balls,”  
20 “blast balls,” and rubber bullets. See *Black Lives*, No. 2:20-cv-00887 (W.D.  
21 Wash. filed June 9, 2020) Dkt. #6, Attachment 1 at 2. Rather than enjoin  
22 use of the weapons, this Court entered a preliminary injunction limiting  
23

1 use of tear gas against protesters – only if other efforts are “exhaustive  
2 and ineffective” and the Chief of Police determines use of tear gas is the  
3 “only reasonable alternative available.” *Black Lives Matter*, No. 2:20-cv-  
4 00887 (W.D. Wash. filed June 12, 2020) Order Granting Motion for  
5 Temporary Restraining Order, Dkt. #34 at p. 10-12.

7 That injunction was in place on July 25. It was read to the officers  
8 before every shift. The language was clear; the limitations unmistakable.  
9 But notwithstanding the clarity of that injunction and its repetition,  
10 Seattle Police Department violated its plain terms with an assaultive front  
11 against protesters.  
12

13 Subsequent to this remarkable show of force, *Black Lives Matter*  
14 proposed and entered into a stipulated “clarification” of the preliminary  
15 injunction, specific protections for journalists, medics, and legal observers  
16 and underscoring the obligation to issue warning before using chemical  
17 irritants or projectiles. See *Black Lives Matter*, No. 2:20-cv-00887 (W.D.  
18 Wash. filed August 1, 2020) Order Granting Stipulated Clarification of  
19 Preliminary Injunction, Dkt. #110.  
20  
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1 But this contemptuous behavior – and its flagrant nature –  
2 underscore that the public needs more than a clarification; it needs this  
3 Court to enjoin use of these weapons to ensure public safety.  
4

5 But as evidenced by the record, the use of force on July 25 by Seattle  
6 Police Department—a day after the contentiously-legislated CCW  
7 ordinance (Ordinance 119806) was halted by a federal order—was not a  
8 simple failure to issue a warning, or inadvertent use of weapons against  
9 non-protesters: “There were so many flash bangs and other explosions  
10 that I lost count—they were just throwing them indiscriminately.” *Black*  
11 *Lives Matter*, No. 2:20-cv-00887 (W.D. Wash. filed July 27, 2020) Kyashna  
12 Decl., Dkt. #64 at ¶ 15. Another protestor recounted: “For the next several  
13 hours, SPD deployed projectiles and chemical irritants directly at whoever  
14 was nearby, including the group of live streamers and corporate media off  
15 to the right of the front-facing line, and legal observers who were  
16 stationed on the left side and throughout the crowd.” *Black Lives Matter*,  
17 No. 2:20-cv-00887-RAJ (W.D. Wash. filed August 4, 2020) Vignau Decl.,  
18 Dkt. #101 at ¶ 14.  
19  
20  
21

22 Because the problem is not merely clarity of an order but rather  
23 wholesale abandonment of it, further clarity and modification of this



1 Court's injunction which still allows for SPD to utilize these munitions fails  
2 to protect the community and Plaintiffs, from the chilling effect of  
3 continued misuse of CCW on the streets.  
4

5 The question is not whether the injunction did or does "provide  
6 protestors with several safeguards." Order Denying Motion for Temporary  
7 Restraining Order, Dkt. #25 at p. 6. It is whether SPD will abide by  
8 guidance and exercise restraint with these weapons. But the answer is  
9 already written: they refuse to, even when under a federal microscope.  
10

11 The Court found plaintiffs here have *more* protections than plaintiffs  
12 who initiated the *Black Lives Matter* suit in June, and accordingly, "the need  
13 for separate and additional injunctive relief is greatly diminished" because  
14 "an injunction is already in place." Order Denying Motion for Temporary  
15 Restraining Order, Dkt. #25 at p. 6-7.  
16

17 But what comfort does an injunction provide a person gassed on the  
18 street in direct violation of this Court's operative order on July 25? What  
19 confidence does a protester have exercising their 1<sup>st</sup> Amendment rights  
20 that such deviation from a clear judicial order will not occur again?  
21

22 This was not a misinterpretation. It was an offensive against the  
23 people sustaining the fight against racial injustice and for defunding of

1 police in the streets of Seattle. Emboldened as the “Ignored Majority”  
2 finally taking back what the city council tried to—and did—legislate away.  
3 See Reply to Defendant’s Response, Dkt. #23 at p. 5.  
4

5 Community members have detailed at length to this Court how it is  
6 that these weapons impact them as a group, when wielded to attack and  
7 not “control”: “At that point, the front line of police began pepper spraying  
8 people caught at the rear of the crowd. The spray drifted south with the  
9 wind to where I was, and I felt it begin to sting my eyes and irritate my  
10 lungs—even though I was twenty to thirty feet removed from the  
11 individuals being targeted.” *Black Lives Matter*, No. 2:20-cv-00887 (W.D.  
12 Wash. filed July 27, 2020) Oberstadt Decl., Dkt. #67 at ¶ 6; “I was struck  
13 by how difficult it was to achieve a “safe” distance out of the range of the  
14 flash bang. There were times that we were standing at least 100 feet back  
15 from the front line of protesters and we were still in range of being hit. Not  
16 only are police launching or throwing flash bangs far and wide, the flash  
17 bangs are also incredibly unpredictable.” *Black Lives Matter*, No. 2:20-cv-  
18 00887 (W.D. Wash. filed August 4, 2020) Sterner Decl., Dkt. #97 at ¶ 18.  
19  
20  
21

22 4) New Facts Further Underscore Need for an Order Enjoining  
23 Possession and Use of CCW at Protests.

1 The Seattle Police Department remains undeterred in its pattern of  
2 assaultive behavior towards protesters speaking against police brutality.  
3 This is true despite long-standing federal oversight, a recent injunction  
4 guiding use of the weapons, and on the heels of a civil rights lawsuit for  
5 excessive use of force initiated in June.  
6

7 For example, Seattle Police Department officers on August 14, 2020,  
8 attacked protesters participating in the “car brigade” – an adaption of  
9 protesters to protect themselves after being targeted by vehicles while  
10 protesting. An SPD officer smashes a window with a driver inside; the tires  
11 of the vehicle are slashed. The video is available at  
12 [https://drive.google.com/file/d/1qlp3aVik6B8JuElZfN8YxFYhpSzbeL0S/vi](https://drive.google.com/file/d/1qlp3aVik6B8JuElZfN8YxFYhpSzbeL0S/view)  
13 [ew](https://drive.google.com/file/d/1qlp3aVik6B8JuElZfN8YxFYhpSzbeL0S/view).  
14  
15

16 Two days prior, the Seattle Police Department assaulted protesters  
17 with a vehicle. That incident is captured on video, and the officer involved  
18 speaks to a protester afterwards:  
19 [https://drive.google.com/file/d/1UHF7xpKAI251Oo2Fb0M1-](https://drive.google.com/file/d/1UHF7xpKAI251Oo2Fb0M1-mhYLv81MkJ1/view)  
20 [mhYLv81MkJ1/view](https://drive.google.com/file/d/1UHF7xpKAI251Oo2Fb0M1-mhYLv81MkJ1/view).  
21  
22

23 These most recent bombastic explosions of power have spurred a call  
from activists and protesters alike to City Council members to denounce this

1 and other recent misconduct by Seattle Police Department. *See, e.g.*  
2 “Unacceptable Escalation of Violence by The Seattle Police Department –  
3 Evening of August 12” template “write-in” letter, available at  
4 [https://docs.google.com/document/d/1jfNvnMCAtsNC7PHQow-](https://docs.google.com/document/d/1jfNvnMCAtsNC7PHQow-BIWKaFW7tutKPGYO33zqmRmk/edit)  
5 [BIWKaFW7tutKPGYO33zqmRmk/edit](https://docs.google.com/document/d/1jfNvnMCAtsNC7PHQow-BIWKaFW7tutKPGYO33zqmRmk/edit).  
6

7 While undersigned was preparing this briefing, yet another instance  
8 of SPD’s antagonism came to light. A video from a police response to a call  
9 at Cal Anderson park, formerly where CHOP existed, shows a member of the  
10 community using a cane and calling a Seattle Police Department officer a  
11 “fucking bitch.” (While such language may be scathing in a legal brief, it is  
12 par for the course in the protests calling for SPD’s defunding, and, in fact,  
13 much more inflammatory language is used.).  
14  
15

16 What does the Seattle Police Department officer do in response?  
17 She pushes the man with a cane, squares up to fight him, and then he is  
18 ultimately tackled. Four screenshots of that video are included below at  
19 Figures 1, 2, 3 and 4. The video is available at:

20 <https://twitter.com/spekulation/status/1295169946314391552>.  
21  
22  
23

Figure 1



Figure 2



Figure 3



Figure 4



On August 6, 2020, Judge Robart found good cause to extend the TRO enjoining implementation of the CCW until September 18, 2020, “so that the court can preserve the status quo and provide the relevant stakeholders with sufficient time to comment on the CCW.” *United States v. City of Seattle*, No. 2:12-cv-01282 (W.D. Wash. Filed August 6, 2020) Order on Joint Status Report, Dkt. #634 at p. 2.

The reports commenting on the CCW ordinance were submitted on August 14 and they underscore a material difference in how SPD responds to protesters engaging in police-related protests compared to other topical protests.

The Community Police Commission (CPC), one of the stakeholders, noted as a threshold matter in its report: “we chose to use the term ‘Crowd Control,’ to model the language used within the Ordinance. However, we

1 feel it is important to highlight the actions that lead to the creation of the  
 2 Ordinance were more akin to protest suppression." SEATTLE COMMUNITY  
 3 POLICE COMMISSION, CPC RECOMMENDATIONS ON SEATTLE'S CROWD CONTROL  
 4 WEAPONS BAN 2 (2020), available at  
 5 [https://seattlecpc.files.wordpress.com/2020/08/cpc-recommendations-on-](https://seattlecpc.files.wordpress.com/2020/08/cpc-recommendations-on-crowd-control-weapons-ban.pdf)  
 6 [crowd-control-weapons-ban.pdf](https://seattlecpc.files.wordpress.com/2020/08/cpc-recommendations-on-crowd-control-weapons-ban.pdf).  
 7

8 The report itself underscores the eristic nature of this term when the  
 9 unruly crowd to "control" is not street protesters but instead an entire  
 10 Department: of taxpayer funded, weapon-wielding police.  
 11

12 The CPC report noted that just over 25% of protests have a police  
 13 monitoring presence. SEATTLE COMMUNITY POLICE COMMISSION, CPC  
 14 RECOMMENDATIONS ON SEATTLE'S CROWD CONTROL WEAPONS BAN 10  
 15 (2020)("Seattle boasts an average of 300+ demonstrations each year, with  
 16 approximately 80 of those mentioned being monitored by police."). It  
 17 highlighted that "SPD's presence during protests was perceived by  
 18 community as an intimidation tactic with a looming sense of threatening  
 19 force, which was actualized." SEATTLE COMMUNITY POLICE COMMISSION, CPC  
 20 RECOMMENDATIONS ON SEATTLE'S CROWD CONTROL WEAPONS BAN 10 (2020).  
 21  
 22

23 The CPC noted that in recent months, SPD "has attended a majority of



1 demonstrations that are specifically rallying against police violence and  
2 brutality." SEATTLE COMMUNITY POLICE COMMISSION, CPC RECOMMENDATIONS ON  
3 SEATTLE'S CROWD CONTROL WEAPONS BAN 10 (2020).

4  
5 The CPC further identified the disparity between SPD's "crowd  
6 management" tactics at protests for racial justice or against police brutality  
7 as opposed to large crowds of sports fans: "Nor have we seen the same level  
8 of response after Seahawk or Sounder championship parades." SEATTLE  
9 COMMUNITY POLICE COMMISSION, CPC RECOMMENDATIONS ON SEATTLE'S CROWD  
10 CONTROL WEAPONS BAN 2 (2020).

11  
12 The Office of Police Accountability, another stakeholder, indicated the  
13 distinction between the current protests topically as it relates to policing and  
14 community: "The recent protests in Seattle have been about police  
15 misconduct—not, for example, women's rights or the environment—which  
16 has posed a unique challenge for SPD. During protests, the police are  
17 generally responsible for protecting the public, preserving property, and  
18 mitigating traffic impacts. But "when the protests are police-focused, they  
19 must also avoid escalating existing tensions with demonstrators  
20 unnecessarily." *U.S. v. Seattle*, No. 2:12-cv-01282 (W.D. Wash. filed August  
21  
22  
23 15, 2020) Office of Police Accountability Report, Dkt. #636 at p. 11.



1 The Office of the Inspector General, the final of the oversight triad,  
2 acknowledge the phenomenon insofar as it recommended a disparity  
3 analysis of SPD response to current and past demonstrations. *U.S. v. Seattle*,  
4 No. 2:12-cv-01282 (W.D. Wash. filed August 15, 2020) Office of Inspector  
5 General Report, Dkt. #637 at p. 35.  
6

#### 7 IV. CONCLUSION

8 The Seattle Police Department has a pattern of indiscriminate and  
9 reckless use of CCW weapons. The misuse of CCW generated this Court's  
10 initial TRO in June. That governing order was in place on July 25. The  
11 evidence before this Court from July 25 is simply incompatible with an  
12 earnest attempt by the Department to conduct themselves in accordance  
13 with this Court's June TRO.  
14  
15

16 The TRO which permitted use of CCW did not protect the community  
17 and protesters engaged in political speech.  
18

19 On balance, and considering the evidence, a "stipulated clarification"  
20 of this Court's order is insufficient to reign in SPD's misconduct and to  
21 protect residents of the community – both their safety, and their exercise  
22 of constitutional rights.  
23

Accordingly, this Court should reconsider Plaintiff's Motion for a Temporary Restraining Order and grant relief as sought here, and as initially requested by plaintiffs in *Black Lives Matter*.

The law is ill-equipped to handle the discrete violations occurring daily at the hands of SPD and to address those harms. A TRO should provide the injunctive relief necessary to assure robust First Amendment protections and to prevent the decidedly irreparable harm that falls on protesters seeking to continue to engage in political speech and assembly with their community on the streets but unable to do so.

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